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09/928,785	08/13/2001	Mark Thomas Cammarota	14966.1	8428

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EXAMINER

WEBB, JAMISUE A

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,785

Applicant(s)

CAMMAROTA ET AL.

Examiner

Jamisue A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24,26,30,31 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24,26,30,31 and 38-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Timmons et al. (4,022,211). Timmons discloses an absorbent article with an outer cover (14), an absorbent assembly (12), with a permanent graphic (blocks, 22) and an active object graphic (letters, 16b), blocks are used to play with and letters are used to form words and to learn, therefore they are considered to be unrelated in subject matter.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-10, and 13-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Brandon et al. (5,766,389).

5. With respect to Claims 1-4: Brandon discloses a permanent character graphic (giraffe), an active object (sun, the sun rises and sets and therefore is considered to be active), a permanent object graphic (the car the giraffe is driving), and a visual segmentation graphic (all other objects in the picture besides: the giraffe and the car it is driving, and the sun). The giraffe is not

Art Unit: 3761

involved in any activity with, or related to the sun, therefore the giraffe and the sun are unrelated in subject matter, and are interactively interrelated. (see figure 1)

6. With respect to claim 5: Brandon discloses the permanent character graphic involved in an activity utilizing the permanent object graphic (the giraffe the car, see figure 1).

7. With respect to claims 6-7: Brandon discloses the active object graphic (the sun) is not related in subject matter and is interactively unrelated to the permanent object graphic (the car the giraffe is driving)

8. With respect to Claims 8-10, and 17: Brandon discloses the visual segmentation object comprising a segmentation graphic that completely surrounds the permanent character and permanent object graphic. Earlier it was mentioned the examiner considered all other graphics besides the giraffe and the car the giraffe is driving and the sun, to be the visual segmentation element. The rainbow, the elephant along with the car it is driving, the lion along with the car it is driving and the ground are considered to be a segmentation graphic that is completely surrounding the giraffe and the car, the permanent character and permanent object graphics (see figure 1).

9. With respect to Claims 13-15, and 18: Brandon discloses the visual segmentation graphic with a continuous line segment that is curved and is perpendicular to an imaginary line connecting the permanent character graphic and the active object graphic, (see figure 1). The examiner considers the edge of the ground graphic that all the cars are driving on along with the top of the rainbow to be the continuous line segments, that are curved.

10. With respect to Claim 16 and 19: Brandon discloses the visual segmentation element with a background color graphic, that is a defined floor graphic and the permanent character is

positioned on the floor graphic. The examiner considers the ground the cars are driving on to be the defined floor graphic, that has a background color, and the giraffe is driving the car on it. (see figure 1)

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-20, 24, 30-31, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon et al. (5,766,389) in view of Timmons et al. (4,022,211).

13. With respect to claims 1-7, 30 and 38: Brandon discloses training pants (10) with an outercover (34), an absorbent assembly (32), longitudinal and transversal centerlines (figures 1-4), longitudinal end edges (116, 118), first and second waist regions (26, 28) a permanent character graphic disposed in first waist region, involved in an activity with a permanent object graphic, and a visual segmentation graphic (Figure 1, the examiner considers the giraffe to be the permanent character graphic, the car the giraffe is driving the permanent object graphic (driving be the activity), all other graphics, such as the elephant, the rainbow, the lion and the ground, are considered to be the visual segmentation element).

Brandon fails to disclose the use of an active object graphic that is interactively unrelated and unrelated in subject matter to the permanent character graphic and the permanent object graphic, is located in the crotch region and is in liquid communication with the absorbent

Art Unit: 3761

assembly. Timmons discloses the use of wetness indicator graphics used in absorbent articles, in the forms of letters, which are located inside blocks and are unrelated to giraffes and cars, that become substantially invisible when wetted and located throughout the diaper, including the crotch (see abstract, along with figures 5 and 6). The examiner considers the letters to be the active object graphic, and the blocks to be another visual segmentation element.

It would have been obvious to one of ordinary skill in the art to add the wetness indicators of Timmons to the training pants of Brandon in order to provide a visual signal that the pad is wetted and assist in determining if a fresh pad is needed. (see Timmons, column 1)

14. With regard to Claims 8-20, 24, 31, and 39, which recite further limitations of graphics, the claims are rejected under 35 U.S.C. 103 (a) as being unpatentable over Brandon et al. as modified by Timmons et al. as applied to claims 1-7, 30 and 38 earlier in this action.

15. With respect to Claims 8-10, and 17: Brandon discloses the visual segmentation object comprising a segmentation graphic that completely surrounds the permanent character and permanent object graphic. Earlier it was mentioned the examiner considered all other graphics besides the giraffe and the car the giraffe is driving, to be the visual segmentation element. The sun, rainbow, the elephant along with the car it is driving, the lion along with the car it is driving and the ground are considered to be a segmentation graphic that is completely surrounding the giraffe and the car, the permanent character and permanent object graphics (see figure 1).

16. With respect to Claims 11 and 12: Timmons also discloses a visual segmentation graphic, that completely surrounds the active object. Earlier it was mentioned that the examiner considered the blocks, the letters are located in, to be another segmentation element, which is a segmentation graphic that surrounds the letters.

Art Unit: 3761

17. With respect to Claims 13-15, and 18: Brandon discloses the visual segmentation graphic with a continuous line segment that is curved and is perpendicular to an imaginary line connecting the permanent character graphic and the active object graphic, (see figure 1). The examiner considers the edge of the ground graphic that all the cars are driving on to be the continuous line segment, that is curved.

18. With respect to Claim 16 and 19: Brandon discloses the visual segmentation element with a background color graphic, that is a defined floor graphic and the permanent character is positioned on the floor graphic. The examiner considers the ground the cars are driving on to be the defined floor graphic, that has a background color, and the giraffe is driving the car on it. (see figure 1)

19. With respect to Claims 20 and 39, Timmons discloses the ink of the letters is in liquid communication with the absorbent assembly and is soluble in urine (column 3, line 9-14).

20. With respect to Claim 24: Brandon discloses the Permanent character being disposed on the outercover (see Figures 3 and 4 with corresponding detailed descriptions), Timmons discloses the active object being disposed on the interior of the outer cover (column 3, lines 41 – 46).

21. With respect to Claim 31, Timmons discloses the active object graphics being disposed throughout the diaper, so therefore they are longitudinally disposed between the permanent character graphics and the transverse centerline.

22. Claims 21, 23 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon and Timmons as applied to claims 1-3 and 38 above, and further in view of Howell (5,389,093).

Art Unit: 3761

23. Brandon as modified by Timmons fails to disclose the active object graphics comprise ink that changes colors when exposed to urine, and an active object comprising an appearing graphic that becomes more visible when exposed to the environment during use and prior to contact with urine.

Howell discloses the use of a thermally sensitive indicator that uses thermochromic ink that becomes more visible when the temperature gets above a certain level, (see abstract). This is considered to mean that the ink is capable of becoming significantly more visible without coming into actual contact with urine. Since the ink is temperature sensitive, it is also fully capable of changing colors (column 3, lines 34-38) when the ink comes into contact with the urine.

It would have been obvious to one of ordinary skill the art at the time the invention was made to have the ink used in the active object graphics of Timmons, to be thermochromic, as disclosed by Howell, so that the visual indication is not present when the user is dry, and will be present when the user secretes waste material. (see Howell column 4)

24. Claims 1-3, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandon et al (5,766,389) in view of Jitoe et al. (5,766,212).

25. With respect to claims 1-7, 30 and 38: Brandon discloses training pants (10) with an outercover (34), an absorbent assembly (32) a permanent character graphic, involved in an activity, and a visual segmentation graphic (Figure 1, the examiner considers the giraffe to be the permanent character graphic, the car the giraffe is driving to be activity the giraffe is involved in,

Art Unit: 3761

all other graphics, such as the elephant, the rainbow, the lion and the ground, are considered to be the visual segmentation element).

Brandon fails to disclose the use of an active object graphic that is interactively unrelated and unrelated in subject matter to the permanent character graphic and is in liquid communication with the absorbent assembly, appears when exposed to urine and is located on the absorbent assembly, facing the outercover.

Jitoe discloses the use of an active object graphic that is adapted to be visually revealed when it is wetted with discharged urine (see abstract), and that a layer of ink is defined by a tissue paper forming a part of said absorbent core (column 2, lines 8-12). Jitoe discloses the use of the graphic to be in the form of flowers, which is both interactively unrelated and unrelated in subject matter to a giraffe driving a car.

It would have been obvious to one of ordinary skill in the art to add the wetness indicators of Jitoe to the training pants of Brandon in order for a mother to be reliably informed of a timing of a diaper exchange. (see Jitoe, column 3)

Double Patenting

26. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 3761

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

27. Claim 2 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,307,119. Although the conflicting claims are not identical, they are not patentably distinct from each other because US Patent No. 6,307,119 discloses the claimed invention except for discloses the use of a windowpane pattern containing the active object graphics. It would have been obvious to one having ordinary skill in the art at the time the invention was made not to have the windowpane pattern on the outercover, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involve only routine skill in the art. In *re Karlson*, 136 USPQ 184.

Response to Amendment

28. Applicant has argued in the Preliminary amendment that Timmons does not disclose a "character" graphic and Brandon does not disclose an "active" graphic, because the applicant has defined, in the specification a "character" as being an amorphous being, and an "active" graphic as being graphics that appear/or fade. However, when examining the claims the examiner gives the words "character" and "active" the broadest reasonable interpretation, and therefore it is the examiner's position that Timmons and Brandon does disclose the claimed invention, as stated above.


Art Unit: 3761

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw 
December 12, 2001


John G. Weiss
Supervisory Patent Examiner
Group 3700